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**UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/828,330 03/28/97 MORGAN

W I-852-002

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EXAMINER

N. PAUL FRIEDERICH
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COON RAPIDS MN 55448

CANFIELD, R

ART UNIT

PAPER NUMBER

3635

17

DATE MAILED:
02/25/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

Office Action Summary

Application No.

08/828,330

Applicant(s)

Morgan

Examiner

Robert Canfield

Group Art Unit

3635



☒ Responsive to communication(s) filed on Dec 10, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-12, 14-16, and 18-48 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☒ Claim(s) 1-12, 14-16, and 18-48 is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☒ The drawing(s) filed on Mar 28, 1997 is/are objected to by the Examiner.

☒ The proposed drawing correction, filed on Dec 10, 1999 is ☐ approved ☒ disapproved.

☒ The specification is objected to by the Examiner.

☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3635

1. This Office action is in response to the amendment filed 12/10/99. Claims 1-12, 14-16 and 18-48 are pending. Claims 13 and 17 have been canceled.

2. It remains unclear if the patent sought to be reissued is involved in any litigation and if so the status of the litigation. Please review MPEP 1442.01-1442.05 and respond by providing the status and the specific details of any litigation so that appropriate steps may be followed. It may be proper to suspend prosecution as set forth in MPEP 1442.02.

3. The record appears silent as to the existence of an assignee, it will be presumed that an assignee does exist. MPEP 1410.01.

4. This application is objected to under 37 CFR 1.172(a) as lacking the written consent of all assignees owning an undivided interest in the patent. The consent of the assignee must be in compliance with 37 CFR 1.172. See MPEP § 1410.01.

A proper assent of the assignee in compliance with 37 CFR 1.172 and 3.73 is required in reply to this Office action.

5. The disclosure is objected to because of the following informalities: the specification was not submitted in the proper form of cut-up soft copies of the original patent as required by MPEP 1411. At this point in the prosecution the easiest remedy would be to provide a sworn statement

Art Unit: 3635

that the specification is a true copy of the patent and that nothing has been added or deleted that has not been underlined or bracketed. Alternatively a substitute specification could be provided.

Appropriate correction is required.

6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore the cable anchored at either of its ends to anchoring means, the anchoring trench, the cover supported above a pond, aqueous solution, and tank must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

7. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 12/10/99 are not approved. Any changes made to any of the patent drawings must be in the form of a new sheet of drawings with any amended figures identified as "amended" and any new figures identified as "new". The proposed corrections would be approved in a supplemental correction which included "amended" on the sheets. This would overcome the above objection to the drawings.

8. Claims 4-12, 14-16 and 18-48 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. See *Hester Industries, Inc. v. Stein, Inc.*, 142 F.3d 1472, 46

Art Unit: 3635

USPQ2d 1641 (Fed. Cir. 1998); *In re Clement*, 131 F.3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997); *Ball Corp. v. United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984).

A broadening aspect is present in the reissue which was not present in the application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the meaning of 35 U.S.C. 251, and the broader scope surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application.

In claim 4 the limitation of the cable disposed through the entire row of loops has been omitted.

In claims 5-12, 14-16 and 18-48 many of the limitations recited in the reasons for allowance have been omitted.

The examiner included these limitations in his reasons for allowance in paper #2 mailed 09/12/94 of the patented file. Applicant failed to present a counter statement or comment as to the examiner's reasons for allowance, and permitted the claim to issue. The omitted limitations are thus established as relating to subject matter previously surrendered.

Art Unit: 3635

9. In accordance with 37 CFR 1.175(b)(1), a supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed.

Claims 1-12, 14-16 and 18-48 are rejected as being based upon a defective declaration under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defect is that changes have been made to the claims since the original declaration was filed.

Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) will overcome this rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:

"Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant."

10. The 35 U.S.C. 112, 102, and 103 rejections in the previous Office action are vacated.

11. Claims 1-3 are allowable over the prior art for the same reasons given in the paper #2 dated 09/12/94 of the patented application S.N. 0/139835.

Serial Number: 08/828330

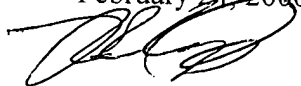
Page 6

Art Unit: 3635

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Canfield whose telephone number is (703) 308-2482. The examiner can normally be reached on M-Th from 8:30 to 6:00.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.

February 24, 2000



Robert Canfield
Primary Examiner